

## **D - CONDITIONS OF CONTRACT & RELEVANT ANNEXES**

**CONDITIONS OF CONTRACT PART I – GENERAL CONDITIONS**

The General Conditions of Contract shall be the Conditions of Contract for Building and Engineering Works Designed by the Employer (First Edition 1999)\* PART (I) published by Federation Internationale Des Ingenieurs-Conseils (FIDIC), and amended or supplemented by Conditions of Particular Application following in PART (II) hereunder. In the avoidance of doubt, the Conditions of Particular Application shall take precedence over the General Conditions in the implementation of the Contract.

All provisions of all Articles not specifically amended herein shall remain in full force and effect.

Tenderers are deemed to in possession of their own copy of the standard documents at tender stage and to be fully aware of and have understood the content thereof.

## **CONDITIONS OF CONTRACT PART II - PARTICULAR APPLICATIONS**

The particular applications shall take precedence over the general conditions in the implementation of the Contract.

### **Clause 1**

#### **Sub-Clause 1.3 - Communication**

Insert the following Sub-Clause:

All communications with respect to Approvals, certificates, consents and determinations shall be addressed to the Employer's principal office:

GPD Ghreiwati Property Development L.L.C.  
P.O. Box 413624, Dubai, U.A.E.  
Tel. No. 04-550 8400  
Fax No. 04-550 8499

Mr. Adnan Al Hamly  
Authorized Representative  
P.O. Box 71241, Dubai, U.A.E.  
Tel. No. 04-550 8400  
Fax No. 04-550 8499

#### **Sub-Clause 1.5 - Priority of Contract Documents**

Delete the documents listed in a-h and replace with the following:

- (a) The Agreement
- (b) The Letter of Acceptance dated .....
- (c) The Letter of Tender dated .....(Volume 1)
- (d) The Appendix to Tender (Volume 1)
- (e) The Conditions of Particular Application (Part II), (Volume 1)
- (f) The Conditions of Contract and its Annexures (Part I), (Volume 1)
- (g) The Instruction to Tenderers (Volume 1)
- (h) The Drawings, (Volume 5)
- (j) The Specifications (Volume 2 Part 1, 2 & 3)
- (k) The Bills of Quantities (Volume 3)
- (l) The Soil Investigation Report and Gate Level Computation (Volume 4)
- (k) Any other documents forming part of the contract documents (to be supplied by the Engineer)

Add the following wording at the end of the sub-clause:

'Drawings, specifications, Bills of Quantities and all other contract documents are to be taken as mutually explanatory and if any item is included in any of these documents it shall be deemed included in all.

The Contractor shall be deemed to have studied and examined all the tender documents and raised all discrepancies among them before submitting his Tender. Thus, the Contractor is solely responsible in any such discrepancies later on in case the item/items are not included or quantity of the item/items are less in the BOQ and shall absorb all additional cost consequent thereon.

The Contractor is responsible for obtaining all information necessary to submit a complete offer and to clarify any doubts, discrepancies and incomplete information before submitting the Tender.'

**Sub-Clause 1.9 - Delayed Drawings or Instruction**

In 3<sup>rd</sup> line of 1<sup>st</sup> paragraph, delete "...within a particular, time which is reasonable" and replace with "within a period not less than 15 days."

Add the following wording after the 1<sup>st</sup> paragraph of the sub-clause:

‘Such notice shall be issued within a period not exceeding 15 days before the planning or execution of the Works is likely to be delayed or disrupted. ‘

Add the following wording at the end of the sub-clause:

‘The Contractor shall give the Engineer fifteen (15) days notice of any additional design drawings, specifications or instructions required to define the Works in detail or to permit the proper execution of the Works. Failure to give notice as mentioned in this clause 1.9 will eliminate the Contractor’s right to claim for extension of time. The Contractor shall not be entitled to any addition to the Contract Price if such drawings, specifications or instructions do not incur additional Work pursuant to clause 13 of Contract Conditions. ‘

**Sub-Clause 1.15 - Details to be Confidential**

Insert the following Sub-Clause:

The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper without the previous written consent of the Employer.

**Clause 2**

**Sub-Clause 2.1 - Right of Access to the Site**

Add the following wording at the end of the sub-clause:

‘In the case of land required for temporary purposes, workshops, work yards, offices and storage of materials and plant, the Engineer shall, on the application of the Contractor, point out areas which may be used for these purposes. If the Contractor finds that the land provided for such temporary purposes is inadequate, he shall apply to the Engineer giving details of his extra requirements. If the extra land cannot be made freely available or if the Contractor shall require any land other than the Site for the storage or preparation of materials or for other purposes in connection with the Works, he shall provide it elsewhere at his own expenses.’

**Sub-Clause 2.2 - Permits, Licenses or Approval**

In first line of Sub-Clause 2.2, delete "shall (where in a position to do so)" and substitute "will endeavour to".

At the end of Sub-Clause 2.2, insert:

The Contractor’s obligations with respect to any such permit, license or approval shall be to prepare and fill the relevant application files with the competent authorities, comply with all standards and requirements of the competent authorities including attending all coordination meetings and/or the execution thereof. The Contractor shall bear no liability for delay in obtaining or failure to obtain any such permit, license or approval, unless attributable to the Contractor’s fault or negligence. Any such delay or failure and its impact on the Project’s Time for Completion or Contract Price shall be treated in accordance with the terms of the Contract.

Add the following wording at the end of the sub-clause:

‘The Contractor shall pay all fees and charges payable to Dubai Municipality and/or any other Local Authorities. The Employer shall reimburse the Contractor for the connection costs paid on behalf of the Employer for Permanent Services Only.

The Contractor shall obtain the building permit, NOCs and approval from authorities such as Civil Defense, Electricity & Water Authority, etc. Payments of related fees, etc. for this purpose shall be allowed in his tender.

The Contractor shall obtain a written approval from the Engineer for shop drawings, Request for Information (RFI) and materials required within fifteen (15) working days from the date of submittals sufficiently prior to the works.'

**Sub-Clause 2.4 - Employer's Financial Arrangements**

Delete Sub-Clause 2.4 in its entirety.

**Sub-Clause - 2.5 Employer's Claims**

At the end of the fourth paragraph of Sub-Clause 2.5 following "Sub-Clause", insert "except in respect of Fines imposed under Sub-Clause 4.8 [*Safety Procedures*]"

**Clause 3**

**Sub-Clause 3.1 - Engineer's Duties and Authority**

Insert in the third paragraph after the words "The Engineer may exercise the authority attributable to the Engineer as specified or necessarily to be implied from the Contract" the following wording:

"provided however, that with regard to all matters concerning amendments to the Contract Price or Time for Completion of the Works, instructions shall only be issued after written approval from the Employer."

And add the following wording to the third paragraph:

'Except as expressly stated in the Contract, the Engineer has no authority to relieve the Contractor of any of his obligations or responsibilities under the Contract and he shall obtain approval from the Employer prior to:

- consenting the Contractor's Programme submitted under sub-clause 8.3.
- issuing any Taking Over certificate under sub-clause 10.1 of the conditions of contract.
- issuing a Performance Certificate under sub-clause 11.1 of the conditions of contract

**Clause 4**

**Sub-Clause 4.1 - Contractor's General Obligation:**

Add the following wording at the end of the sub-clause:

'The Contractor acknowledges that despite any review, approval or vetting, the rates and lump sums in the Contract include the cost of the whole of the work under the Contract.

Within fourteen (14) days after the signing of the Contract but before commencement of any work, the Contractor shall submit qualifications and experience of his staff for approval by the Engineer. The Engineer shall have the right to interview any of the candidates before final approval is given. Despite such approval, the Engineer has the right to ask the Contractor to replace any of his staff who he thinks is not performing his duties satisfactorily.

Any work of temporary reinstatement to any road, structure, property or other land expressly required by the Contract shall be considered to be a part of the Permanent Works for the purposes of this Clause and the Contractor's obligations and responsibilities under the Contract shall extend in all respects to such works as if they were Permanent Works until the expiry of the Defects Notification Period or until such time as possession of the area in which such temporary reinstatement has been made is taken for the purposes of further works under a separate contract, whichever is the earlier.

The Contractor shall ensure that sufficient spare parts are available at the Site for the use of the Contractor during commissioning of each Section or Portion of the Works, including its Tests on Completion and all other commissioning prior to the issue of the relevant Taking-Over Certificate. Such commissioning spares shall be in addition to the Subcontractor's Spare Parts required to be provided by the Contractor and to the spare parts required to discharge the Contractor's obligations to remedy defects during the Defects Notification Period and under any guarantee or warranty extending beyond the expiry of the Defects Notification Period.

All surplus-commissioning spares shall be handed over to the Employer by the Contractor without charge prior to the issue of the Performance Certificate and shall become the property of the Employer.

The item numbers given in the Spare Parts List are intended to be cross-referenced with the Drawings and the operations and maintenance manuals. The Contractor shall ensure that all proprietary equipment and parts are listed in such manuals.

In respect of any Spare Parts provided to the Employer having a limited shelf life or requiring special storage conditions, sufficient details of the shelf life and storage conditions shall be given to the Employer in writing at least eight weeks prior to deliver to Site to enable the Employer to make arrangements for the correct storage of such Spare Parts.

The Contractor shall treat the Contract and everything contained therein as private and confidential. The Contractor shall not disclose or divulge information of any kind to any third parties without the written consent of the Engineer, who shall seek the written approval of the Employer. In particular, the Contractor shall not issue any statements, publish any information, issue any Drawings concerning the Works and shall not use the Site for the purpose of advertising (including that of his own operations) without the written consent of the Engineer and subject to such conditions as he may prescribe.

The Contractor shall be held responsible, and be liable, for a period of ten (10) years commencing from the date of issue of the Performance Certificate, for the safety of the construction, for workmanship and materials, and for the consequence of any errors, omissions, negligence, default or defect arising from the execution of the Works. The Contractor shall indemnify the Employer for any loss or damage arising from such liability. Such liability shall not limit, reduce or negate any of the Employer's rights or any of the Contractor's obligations under the laws in Dubai, United Arab Emirates.

The liability of the Contractor shall in any event be limited to the cost of rectification of the Works together with any incidental or associated costs resulting there from.

The approval of the Engineer, the issuance of the Performance Certificate and the return of the Performance Security shall not in any way absolve or relieve the Contractor from any such obligation, responsibility or liability.'

#### Sub-Clause 4.2 - Performance Security

Delete Sub-clause 4.2 in its entirety and insert the following wording:

'The Contractor shall obtain at his cost and submit within ten (10) days from the date of the Employer's Letter of Acceptance of his Tender a guarantee for the proper performance of the Contract in the sum stated in Appendix to Tender in the form of an unconditional and irrevocable guarantee from a first class Bank in the UAE in accordance to sub-clause 4.2 hereof which is subject to approval of the Employer. The Performance Security shall be in accordance with the sample from annexed to these Conditions and shall remain in full force and effect during the actual period of execution of the Works and until issuance of the Performance Certificate in respect of the Works.

In no event shall the sum of the Performance Security constitute a ceiling or limitation of the liability of the Contractor.

The obtaining, extension and renewing of such Performance Security shall be at the expense in all respects of the Contractor. The Performance Security shall be retained by the Employer as a guarantee for the due execution and proper performance of the Contract and recovery of any damages or other sums due for which the Contractor may become liable to the Employer under this Contract.

In case the validity of the Performance Security is likely to expire before the issue of the Performance Certificate which is or likely to be delayed, then the Contractor shall obtain and deliver to the Employer not less than 14 days before the validity of the Performance Security expires, such extensions or alterations of the Performance security as are necessary to keep the same valid until the issue of the Performance Certificate.

#### Sub-Clause 4.4 - Subcontractors

Add the following paragraphs at the end of sub-clause 4.4:

'The Contractor is not allowed to carry out the works by himself for works where special subcontractors are specified.

The Contractor shall seek the consent of the Engineer for using any specified Subcontractors or materials, such consent shall not be withheld without satisfactory reason.

The Contractor shall supply to his subcontractors all drawings, relevant parts of the specifications and any other information which are necessary for or will assist the Subcontractor in the execution of the subcontract works.'

#### Sub-Clause 4.6 - Co-operation

Insert the following wording at the end of the sub-clause:

- (d) The contractor will be responsible for coordination with other contractors under the directions of the Engineer or unilaterally to hold and attend necessary meetings, etc., and thereby to partake in the overall management of the interface of different packages, with respect to access for other contractors, handover of sections or parts of in interface with other contractors on site, to allow access for services connections or other temporary or permanent works by other packages contractors.
- (e) If there are other contractors, subcontractors or other persons authorized by the Engineer or the Employer working in, or using the same area where the Contractor is performing its work, the Contractors shall fully cooperate with this persons to reduce and eliminate all delays or hindrance in the orderly progress of the works and to assure orderly expeditious performance and completion of the entire project.
- (f) Should the Contractor install any portion of the works prior to coordination or in such manner as the cause interference with the work of others, the Contractor shall, at its own expense arrange for its removal or modification, or cutting and patching.'

#### Sub-Clause 4.7 - Setting Out

Add the following wording at the end of the sub-clause:

'The expense of rectifying any errors shall be borne by the Contractor if such error results from incorrect data on the drawings or in the specifications which were used for tender purposes which were deemed to have been carefully studied by the Contractor and accepted by him as being correct unless he has notified the Engineer in writing of such errors at the time of tendering.'

#### Sub-Clause 4.8 - Safety Procedures

Add the following wording at the end of the sub-clause:

- (f) comply with the regulations of the Employer and any controlling authority in force at the site of the work relating to the precautions to be taken against fire hazards.

- (g) comply with all respects with the regulations of all service authorities in carrying out his obligations under the contract whether for temporary or permanent works.
- (h) provide and maintain, in good operation condition, suitable and adequate fire protection equipment and services and shall comply with all recommendations regarding fire protection made by the representatives of the civil defense fire service, fire insurance company carrying insurance on the works or the Engineer or his representatives.
- (i) provide and maintain adequate fire protection in the form of barrels of water with buckets, fire bucket tanks, fire extinguishers, or other effective means of extinguishing fire, ready for instant use, distributed around the project and in and about temporary inflammable structures during construction of work.
- (j) store and dispense gasoline and other flammable liquids in / from safety containers. Storage shall not be within the buildings.
- (k) prior to approved torch-cutting and welding operations to be performed by subcontractors, chemical extinguishers shall be available at each location where such work is in progress.
- (l) keep the works orderly and free from all combustible rubbish which shall be promptly and legally removed from site.
- (m) The contractor will be fully responsible for the safety of the adjoining structures and shall be fully responsible for any damages to the nearby streets and buildings or any damages may happen to the public or private properties as negligence or default in taking sufficient precautions.
- (n) shall not use any explosives without the permission in writing of the Engineer who will require that the Contractor has complied in full with the regulations in Dubai and in the UAE regarding the use of explosives. The Engineer's refusal to permit the use of explosives shall not constitute grounds for any claim.

#### Sub-Clause 4.10 - Site Data

Delete the first paragraph of sub-clause 4.10 in its entirety and replace with the following:

'If any data on hydrological and sub surface conditions relevant to the works are available, then the Employer shall have made available to the contractor such data with the tender documents but the contractor shall be responsible for his own interpretation thereof.

The contractor will, otherwise and in any case, be deemed to have carried out his own investigations at the time of tender to ascertain for himself the nature of the soil conditions in any type, classification, strata, level, location, hardness (whether soft or hard rock) etc.

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have fully satisfied himself (so far as is practicable, having regard to considerations of cost and time) before submitting his Tender.'

Add the following wording at the end of the sub-clause:

'Pursuant to sub-items (d) and (e) of the Clause hereof, the Contractor shall liaise with the various authorities in respect of permanent service connections for the project. The number and size of main connections shall be obtained by the Contractor for the Engineer. The Contractor shall give all notices, make arrangements for and collect all permits, obtain approvals, etc. and must allow for the cost of this work in his tender.

The Contractor when appointed must liaise and comply with all requirements and directions of the local public security (police), office and with all persons who have authority likely to affect the carrying out of the works.'

#### Sub-Clause 4.19 - Electricity, Water and Gas

Add the following wording at the end of the sub-clause:



'The Contractor shall provide on the Site, to the satisfaction of the Engineer, an adequate supply of water and electric power for the use in the Works and site facilities. The source of potable water for all the site offices, and the workforce shall be to the approval of the Engineer.'

**Sub-Clause - 4.21 Progress Reports**

Add the following wording at the end of the sub-clause:

'The Contractor shall submit to the Engineer monthly progress report detailing the works carried out during the preceding month in relation to the programme. The Contractor shall submit with this report 10 nos. coloured photographs clearly showing the progress of the work as directed on site by the Engineer.'

**Sub-Clause 4.23 - Contractor's Operation on Site**

Add the following wording at the end of the sub-clause:

'The Contractor must avoid obstructing or damaging roads, footpaths, drains, watercourses, public utilities and other services on or adjacent to the Site:

- a) Which are visible or referred to in the Contract, or
- b) The location of which can be ascertained by the Contractor from appropriate authority.

If the Contractor or a person for whom the Contractor is responsible obstructs or damages anything referred to in this sub-clause, the Contractor must at his own cost immediately remove the obstruction and fix up the damage.

In the event the Contractor fails to take action under Clause 4 hereof after due and reasonable warning from the Engineer, the Employer may do it and recover all costs incurred from the money due or will become due to the Contractor.

Immediately prior to the Engineer's inspection for the issue of the Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the site to which such Taking-Over Certificate relates, all surplus material, rubbish and debris and leave the area clean for the inspection.

The Contractor shall make all temporary arrangements for the proper discharge of sewage and drainage from or in connections with the Work and shall maintain the same to the satisfaction of the Engineer and the authority concerned as long as they may be required.'

**Clause 5**

**Sub-Clause 5.1 - Definition of "nominated Subcontractor"**

Add the following wording at the end of the sub-clause:

'The Contractor shall provide free to the Sub-Contractors the attendance and site accommodation (except fitting out of accommodation), scaffolding, power, water, and the like with complete required furniture and equipment, other temporary buildings and storage areas, all plant for receiving, off loading, storing and subsequent handling and hoisting of materials and equipment to their final position, etc., for the completion of their works. The Contractor will also be required to fully take over all responsibilities for the Nominated Subcontractors and domestic Subcontractors.'

**Sub-Clause 5.4 - Evidence of Payments**

Add the following wording at the end of the sub-clause:

'The Engineer shall have powers to withhold all further interim payments, till such period the contractor provides reasonable proof that all payments, less retentions, included in previous certificates have been paid or discharged by the Contractor to his sub-contractors.'

## **Clause 6**

### **Sub-Clause 6.1 - Engagement of Staff and Labour**

Add the following wording at the end of the sub-clause:

‘All arrangements for all staff and labour, local or other, and for their payment, housing, feeding and transport, shall be in accordance with the Laws of the Emirate of Dubai and of the United Arab Emirates, in particular the Labour Law.

All Contractor's personnel shall be properly dressed and display identification name tag.’

### **Sub-Clause 6.3 - Persons in the Service of Employer**

Add the following additional wording at the end of the sub-clause:

‘.....or Engineer's Personnel’

### **Sub-Clause 6.4 - Labour Laws**

Add the following wording at the end of the sub-clause:

‘The Contractor shall abide by the rules and regulations from local Authorities, which may require his observance and he shall instruct his agents, servants and other employees to obey such regulations. The Contractor shall be responsible for keeping discipline on the site and shall dismiss within 24 hours from receipt of written instructions by the Engineer to that effect any servant, laborer or other employee who neglects to observe the regulations or who refuses to carryout instructions given to him by the Contractor on the representation of any responsible representative of the Employer.

The Contractor shall be responsible for the return to the place where they were recruited or to their domicile; all such persons as be recruited and employed for the purposes of or in connection with the contract who are not nationals of and have been recruited outside the UAE shall have left the UAE.

The Contractor shall be deemed to have included in his tender price for strict compliance with the Labor Law, and any other local labor legislation currently in force, or likely to come into force, during the currency of the Contract.’

### **Sub-Clause 6.5 - Working Hours**

Add the following additional wording at the end of the sub-clause:

‘Pursuant to item (b) above subject to applicable legal limitations, the Engineer reserves the right to permit working at times outside the normal daily working hours. If the Contractor wishes or requires to work outside these hours, he shall give notice to the Engineer 24 hours prior to his due date for extending the daily hours. The Engineer will require details of the work to be carried out prior to his decision. The Contractor shall pay the overtime hours to the Engineer through the Employer and in accordance with the Labor law in force and will be paid by the Employer by means of deducting it from Contractor's Interim Payment Certificates”.

In the event that the Engineer or Engineer's representative or any of their assistants appointed pursuant to clause 3 are obliged to supervise the Contractor's operations in excess of 10 hours per working days, or on Fridays or declared public holidays in Dubai, the cost to the Engineer of such overtime shall be stipulated in the contract and shall be agreed between the Engineer and the Contractor and approved by the Employer. Payment shall be made to the Engineer by Contractor who shall directly pay the amount of such overtime considering the rates stipulated below:

<u>Personnel</u>	<u>X</u>	<u>Y</u>
Resident Engineer	Dhs. 250/hour	Dhs.300/hour
Electrical Engineer	Dhs.150/hour	Dhs.200/hour
Mechanical Engineer	Dhs.150/hour	Dhs.200/hour
Civil Inspector	Dhs.100/hour	Dhs.120/hour

X= rate of any hours after or beyond eight hours per day

Y= rate of any hours on Fridays and public holidays.'

#### Sub-Clause 6.6 - Facilities for Staff and Labour

Delete the 1<sup>st</sup> paragraph and replace with the following wording:

'Except in so far as the contract otherwise provided, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all the staff and labour, employed for the purpose of or in connection with the contract including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitary conveniences, cookhouses, fire prevention and firefighting equipment, air conditioning, cookers, refrigerators, furniture and other requirements in connection with such accommodation of amenities.

On completion of the contract, unless otherwise agreed with the Employer, the temporary camps/housing provided by the Contractor shall be removed and the site reinstated to its original condition which is subject to approval of the Engineer.'

#### Sub-Clause 6.7 - Health and Safety

Add the following wording at the end of the sub-clause:

'In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by all Government of Dubai and the United Arab Emirates, or the local medical or sanitary authorities, for the purposes of dealing with and overcoming the same.

The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer may from time to time prescribe.

The Contractor shall report to the Engineer on daily basis details of any accident on Site. In the case of any fatality the Contractor shall in addition, notify the police and the Engineer immediately by the quickest available means.'

#### Sub-Clause 6.10 - Records of Contractor's Personnel and Equipment

Add the following wording at the end of the sub-clause:

'The Contractor shall inform the Engineer daily with all necessary information such as number of workers, equipment, materials, etc. in the site through the agreed daily reports approved by the Engineer.'

### **Clause 7**

#### Sub-Clause 7.1 - Manner of Execution

Add the following wording at the end of the sub-clause:

'The Contractor shall give the Engineer upon request full particulars of the mode and place of manufacture and source of supply and the performance capacities and such other information as the Engineer considers necessary in respect of any of the material, machinery or other equipment to be used in connection with the Contract. The Contractor shall, prior to arrangements of manufacture off site of any works or fabricated material to be used in

connection with the Contract, provide the Engineer reasonable written notice of his intention to do so. The Contractor shall at his own cost provide adequate storage and protection for all materials so as to preserve their quality and fitness for the Works.

The Contractor shall make all submittals of materials and shop drawings in sufficient details and the Engineer shall review, comment, approve or reject the said submittals within twenty one (15) days of receiving it.'

#### Sub-Clause 7.3 - Inspection

Add the following wording at the end of the sub-clause:

'The Contractor shall give minimum 24 hours notice to the Engineer or any person authorized by him, to inspect the Work or part of the Works. Failure of the Contractor to abide by this notice shall relieve the Engineer of any consequences, which the Contractor may suffer.'

#### Sub-Clause 7.4 - Testing

Add the following additional wording at the end of the sub-clause:

Tests shall be conducted as provided in the Contract and in accordance with submitted Inspection and Test Plans. Additional or special tests may be conducted by the Engineer or a person (which may include the Contractor) nominated by the Engineer.'

The Contractor shall give minimum 24 hour notice to the Engineer or any person authorized by him, to inspect the Work or part of the Works. Failure of the Contractor to abide by this notice shall relieve the Engineer of any consequences, which the contractor may suffer.

### Clause 8

#### Sub-Clause 8.1 - Commencement of Works

In line one of the second paragraph delete the wording "as soon as is reasonably practicable".

Add the following wording at the end of the sub-clause:

'The Contractor shall commence the work within 7 days after the receipt by him of a notice to this effect from the Engineer and within 14 days after the receipt of notice to commence by the Engineer, the Contractor shall provide to the Engineer a breakdown of any lump sum items.'

The Contractor shall ascertain by himself before commencement of works the locations of all watercourses, sewers, drains, gas pipes, water pipes, electricity and telecommunication cables, other services and structures which may be encountered during the construction of the Works and not mentioned in the Contract. He shall temporarily support or divert and subsequently reinstate all such services and structures as necessary and to the satisfaction of the Engineer on his expense.

Where permanent diversion or support of such service or structure is rendered necessary as the unavoidable result of the construction of the Works in accordance with the Contract, the Engineer after due consultation with the Employer will instruct the Contractor as to the diversion or support to be provided and the Contractor shall be paid the costs thereof in accordance with Clause 13. '

#### Sub-Clause 8.3 - Programme

Delete the text of sub-clause 8.3 in its entirety and replace with the following:

Within fourteen (14) days from the date of the Letter of Acceptance, the Contractor shall submit to the Engineer for his consent a detailed CPM Program accompanied by a complete critical path analysis for the execution and completion of the Works. The CPM Program shall be presented on a weekly time scale and shall be prepared by using Primavera Project Planner Software System (Version 3 or above) in a manner as detailed in the specifications.

**Sub-Clause 8.7 - Delay Damages**

If the Contractor fails to complete the works including commissioning within the time prescribed by clause 8.2 hereof or extended time then the contractor shall pay to the Employer the sum stated in the Appendix to form of tender as delay damages for such default for every day or part of a day which shall elapse between the time prescribed by clause 8.2 hereof or extended time as the case may be and the date stated in the taking over certificate. The Employer without prejudice to any other method of recovery and without necessity of any court action or legal proceedings and without proof of financial losses incurred by the Employer deduct the amount of such liquidated damages from any monies in his hand due or which may become due to the contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the work or from any of his other obligations and liabilities under the contract.

Add the following sub-clause:

**Sub- Clause 8.13 - Engineer's supervision**

In the event that the Engineer is obliged to supervise the Contractor's operations after the period named in the contract for the completion of the works, the cost to the Engineer of such supervision is set in the Appendix to Tender. Payment will be made to the Engineer by the Employer who shall deduct the agreed amount from the monies due to the Contractor certified by the Engineer in the payment certificates.

**Clause 9**

**Sub-Clause 9.2 - Delayed Test**

Add the following additional wording at the end of the sub-clause:

If the Contractor fails to carry out the test on completion caused by the Employer or the Engineer or other Contractors employed by the Employer or statutory bodies or authorities, the Employer shall be deemed to have taken over the works on the date when the tests on completion would have been completed but for such prevention the Engineer shall issue a taking over certificate accordingly provided always that the works shall not be deemed to have been taken over if they are not substantially completed in accordance with the contract.

If the works are taken over under this sub-clause, the Contractor shall nevertheless carry out the tests on completion during the defects liability period. The Engineer shall require the tests to be carried out by giving 14 days notice.'

**Clause 10**

**Sub-Clause 10.1 - Taking-Over of the Works and Sections**

Add the following additional wording at the end of the sub-clause:

The Works will only be considered as "Substantially Completed" and necessary certificate is issued when all snag works are completed and final main service connections have been completed and commissioned unless in the opinion of the Engineer these connections have been excessively delayed for reasons beyond the control of the Contractor. It is the Contractors responsibility to arrange all main connections as necessary.

The Contractor shall complete the works to the satisfaction of all Government Departments. The Taking Over Certificate will be only be issued subject to the provisions of this clause, when the Contractor has obtained certificates of approval from the Municipality Departments including Water, Electricity, Health and Civil Defense Departments, etc.

## **Clause 12**

### **Sub-Clause 12.1 - Works to be Measured**

Delete this sub-clause in its entirety and replace with the following wording:

‘The contract is for a lump sum and is not subject to re-measurement. If the work is varied by the Engineer, only that part varied will be re-measured. If the Engineer requires any part or parts of the works to be measured, he shall give notice to the Contractor who shall forthwith send a qualified agent to carry out such measurement. The Contractor shall furnish the Engineer with all particulars and measurements he requires for checking and approval. Should the Contractor not attend or neglect or omit to send such an agent then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work.’

### **Sub-Clause 12.3 - Evaluation**

Add the following additional wording at the end of the sub-clause:

‘The quantities set out in the Bill of Quantities by the Engineer or the Contractor as the case may be are the estimated quantities of the work.

The Contractor's attention is drawn to the fact that the bill of quantities have been provided as a guide for the works. The Contractor is totally and without exception, responsible for determining the quantities for materials required, and for pricing his bid in conformance with the specifications and drawings as well.

The Contractor shall calculate the quantities of work required based on the scope of works in the contract drawings and or specifications and shall provide the Engineer with detailed quantities and a priced schedule of rates upon request.

The Contractor is responsible for the accuracy of the quantities and no adjustment will be made in the event of any error or omission in the quantities being discovered.

The rates and quantities contained within the schedule of rates will be used to prepare interim valuations and to value any variations which may occur.

The Contractor's price is fixed and no adjustment will be made in respect of fluctuation in the cost of plant, labour, material or any other matters affecting the cost of executing the works.’

### **Sub-Clause 12.4 - Omissions**

Delete this sub-clause in its entirety and replace with the following wording:

In the event of any item is deleted in its entirety, the Contractor shall not be entitled to payment for profit and overheads on the deleted item.

## **Clause 13**

### **Sub-Clause 13.1 - Right to Vary**

Add the following additional wording at the end of the sub-clause:

‘The Contractor shall declare any variation in a time period of three weeks, if not, such variation will be considered to be invalid and shall not be considered as a variation without an instruction from the Engineer.

The valuation of variation shall be referred to the rates and prices set out in the approved BOQ and the contractor shall not be entitled for any mark-up and shall not be entitled of any additional payment.’

**Sub-Clause 13.5 - Provisional Sum**

Add the following additional wording at the end of the sub-clause:

'The Employer reserves the right to tender the Provisional Sum items directly and delegate them to the Contractor or procure them at his end and supply them to the Contractor for installation at the Employer's sole discretion. These Subcontractors and/or Suppliers shall be treated as nominated Subcontractors as per the contract.'

**Sub-Clause 13.7 - Adjustments for Changes in Legislation**

Delete this sub-clause in its entirety

**Sub-Clause 13.8 - Adjustments for Changes in Cost**

Delete "Adjustments for Changes in Cost" and its entirety and replace with "Prime Cost Rate" with the following:

"Prime Cost Rates" means a rate included in the Contract and designated as "P.C. or PC" in an item description in the Bill of Quantities, (or in the Drawings or Specification) indicating the provisional unit cost of providing (including delivery to Site) a designated material forming part of the work covered by such item.

In respect of every Prime Cost Rate, the Engineer shall have the authority to issue instructions on the respective kind of designated material to be provided either by the Contractor or by a Nominated Subcontractor, for the Contractor to execute the work. The Lump Sum Contract Price shall be adjusted by the difference between the PC and the actual cost per unit (including delivery to Site) multiplied by the actual quantity in accordance with the drawings as included in the Contract.

The Contractor shall produce to the Engineer all quotations, invoice voucher and accounts or receipts in connection with expenditure in respect of Prime Cost Rates, except when work is valued in accordance with rates or prices set out in the Contract.

The Lump Sum Contract Price shall be adjusted by the following conditions:

- a) the difference between the PC and the actual cost per unit (including delivery to Site) multiplied by the contract quantity provided that no change in the layout drawings
- b) the difference between the PC and the actual cost per unit (including delivery to Site) multiplied by the actual quantity as per the approved shop drawing in case of change in layout/design.

**Clause 14**

**Sub-Clause 14.1 - Contract Price**

Add the following additional wording at the end of the sub-clause:

'The Contractor is responsible to include in his tender the amount needed for any items not shown in the design or not mentioned in the specifications in compliance to the requirements and regulation of D.M. and other local authorities.'

**Sub-Clause 14.2 - Advance Payment**

Add the following additional wording at the end of the sub-clause:

'An advance payment shall, following the presentation of the Contractor to the Employer of an approved performance bond in accordance with clause 4.2 hereof and a bank guarantee of one of the approved banks on terms approved by the Employer for the full value of the advance payment, be certified by the Engineer for payment to the Contractor.

The advance payment shall not be subject to retention. The advance payment shall be repaid in monthly installments at 10% of the value of the monthly certificate commencing from the second month of the contract period. Provided that upon the issuance of a Taking Over

certificate for the whole of the works in accordance with clause 10.1 herein or upon occurrence of any default of Contractor or termination, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer. ‘

Sub-Clause 14.3 - Application for Interim Payment Certificates

In the first line of the first paragraph the words “six copies” shall be replaced by “two copies”

The following wording shall be added to the end of sub-clause (e):

‘Provided that such materials or plant shall not have been delivered to the site prematurely’

At the end of the sub-clause the following wording shall be added:

‘The Engineer shall, within 28 days of receiving the bill statement, deliver the Employer an Interim Payment Certificate stating the amount of payment to the Contractor.’

Sub-Clause 14.5 - Plant and Materials intended for the Works

Delete Sub-Clause 14.5 in its entirety.

Sub-Clause 14.6 - Issue of Interim Payment Certificates

In the second line of the first paragraph add after the words “performance security” the following wording

‘and proof of insurances’.

The following additional wording shall be added at the end of the sub-clause:

‘The Employer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate which shall have been issued by the Engineer and shall be entitled to, if any work is not being carried out to his satisfaction, omit or reduce the value of such work in any Interim Payment Certificate.’

Sub-Clause 14.7 - Payment

Delete this clause in its entirety and replace with the following:

‘The amount due to the Contractor under any interim certificate issued by the Engineer pursuant to this clause, or to any other term of the contract, shall be subject to sub-clause 8.7, be paid by the Employer to the Contractor within the period stated in the Appendix to Tender after such interim certificate has been delivered to the Employer, or, in the case of the final certificate, referred to in sub-clauses 14.2 and 14.3, shall be within 56 days after such final certificate has been delivered to the Employer.

All payments made to the Contractor by the Employer shall be in the currency of the UAE.’

Sub-Clause 14.9 - Payment of Retention Money

Add the following additional wording at the end of the sub-clause:

‘The first half of retention money shall not be released until all the operation and maintenance manuals, together with the “as built drawings”, have been provided to the Employer in accordance with the Contract documents to the satisfaction of the Engineer, and that the Works required by the Engineer’s snagging of the Works has been substantially completed.’

Sub-Clause 14.13 - Issue of Final Payment Certificate

In line 3 of first paragraph, after the words “.... the Engineer shall issue, to the Employer, “ the following wording shall be added ‘(a copy to the Contractor)’...



**Sub-Clause 14.15 - Currencies of Payment**

Delete Sub-Clause 14.15 and substitute "The Contract Price shall be paid in United Arab Emirates (AED). The Contractor's bank account shall be denominated in AED."

**Clause 17**

**Sub-Clause 17.2 - Contractor's Care of the Works**

Add the following wording at the end of the sub-clause:

'The Contractor shall provide a summary of product quality records every month, which demonstrate the conformance of the work with the Contract requirements.

The Contractor must develop and maintain the Management Systems and must establish and maintain the Management Plans required by the Specifications.

The Contractor must control the quality and performance of the work under the Contract in accordance with the specified Management Systems and Plans and the Contractor must retain records produced in the implementation of the specified Management Systems and Plans and make them available to the Engineer on request. The Contractor must retain the records for a minimum period of 5 years after the date of issue of the Final Payment Certificate.

The definitions in the Quality System Specification shall be used in the interpretation of the words and expressions used in the quality assurance provisions of the Contract (unless the context otherwise requires). The quality assurance provisions on the Contract include this clause and the Quality System Specification.

The Contractor shall ascertain and enforce any Government Regulations concerning boycotting of other countries. The Contractor shall indemnify the Employer against any penalty which may arise as a result of breach of the boycott laws.

No photographs or publicity of the sites or of the works or any part thereof nor allow the Site or the Works to be used for any form of advertising whatsoever without the prior approval in writing of the Employer and subject to such Conditions as may be prescribed.'

**Clause 18**

**Sub-Clause 18.2 - Insurance for Works and Contractor's Equipment**

Add at the first paragraph after the words "The insuring party shall insure the works, plant, materials and documents" the following wording:

'including all plant, equipment and materials of any kind being provided under separate contract or by nominated subcontractors for incorporation in the works from the time such plant, equipment and materials are taken over by the Contractor at the port, workshop or place of manufacturing'.

Add after the last paragraph the following:

'Any amounts not insured or not recovered from the insurers shall be borne by the Contractor in accordance with their responsibilities under Clause 17.2.'

**Sub-Clause 18.3 - Insurance Against Injury to Persons and Damage to Property**

Add the following wording at the end of the sub-clause:

'Before commencing the execution of the works the Contractor (but without limiting his obligations and responsibilities under sub-item d, (i) to (ii) of the clause hereof) shall insure in the joint names of the Employer and the Contractor against his liabilities for any material or physical damage, loss or injury which may occur to any property including that of the Employer) or to any person (including any employee of the Employer) by or arising out of the

execution of the Works or in the carrying out of the contract and within 28 days of the commencement date, provide a copy of the insurance policies to the Employer.

Such insurance shall be effected with an insurer and in terms approved by the Employer (with approval shall not be unreasonably withheld) and for at least the amount stated in the Appendix to the Tender. The Contractor shall within a period of sixty days of the commencement date produce to the Engineer or the Engineer's Representative the policy or policies of insurances and the receipts for payment of the current premiums.

The terms shall include a provision whereby, in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Employer, the insurer will indemnify the Employer against such claims and any costs, charges and expenses in respect thereof.

It shall be the duty of the Contractor to notify the insurers of any of the insurance referred to in Clauses 18.2, 18.3 and 18.4 of any matter or event which by the terms of such insurances are required to be so notified and the Contractor shall indemnify and keep indemnified the Employer against all losses, demands, proceedings, costs, charges and expenses whatsoever arising out of resulting from any default by the Contractor in complying with the requirements of this sub-clause whether as a result of the avoidance of such insurance or otherwise.'

#### Sub-Clause 18.5 - Alteration to Insurances

Neither Party shall make any material alteration to the terms of any insurance without the other's prior written approval. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice thereof to the other Party.

#### Sub-Clause 18.6 - Claims Assistance

The Contractor shall give all such assistance to the Employer as may be appropriate in connection with any claims that may be made under the policies of insurance effected pursuant to this Clause 18 and the Employer shall give to the Contractor all such reasonable assistance as may be appropriate in connection with claims under such insurances made by the Contractor reasonably requested by the Contractor.

Neither the Contractor nor the Employer shall give any release or make any compromise with any insurer without the prior written consent of the other.

### **Clause 20**

#### **Clause 20 – Claim, Disputes and Arbitration**

Sub-clauses 20.2, 20.3, 20.4, 20.5, 20.6, 20.7 and 20.8 are deleted in their entirety and replaced with sub-clause 20.2 replaced with the following wording inserted:

'Sub Clause 20.2 Settlement of Disputes

'If a dispute (of any kind whatsoever) arises between the Parties in connection with or arising out of, the Contract or execution of the Works such dispute shall be resolved by the Engineer and the decision shall be binding between the two parties. If the decision of the Engineer is not binding between the two parties and amicable settlement has not reached, such dispute shall be settled in the Dubai Courts.

'Add the following New Clause

#### **Clause 21 – Contractors Warranty**

The Contractor hereby guarantees that all work executed under this contract will be free from faults resulting from defective labour and/or materials for a period of five years from the date of the Performance Certificate as defined by Clause 11.9.

Any faults resulting from defective labour and/or materials occurring within five years from the date of the Performance Certificate as defined by 11.9 shall be rectified by the Contractor without charge to

the Employer and the Contractor hereby indemnifies the Employer against any claims or liabilities occurring as a result of such defective labour and/or materials.

This guarantee does not however in any manner relieve the Contractor of his liabilities under the Municipal regulations which shall remain applicable in addition.'

**ANNEX SUMMARY**

- a. Annex A - Form of Performance Security
- b. Annex B - Form of Advance Payment Guarantee
- c. Annex C - Form of Retention Money Guarantee

**Annex A: FORM OF PERFORMANCE SECURITY**

Brief description of the Contract: .....

Name and address of the Beneficiary: ..... (whom the Contract defines as the Employer).

We have been informed that .....  
(hereinafter called the "Principal") is your contractor under such Contract, which requires him to obtain a performance security.

At the request of the Principal, we ..... , being a bank operating in the United Arab Emirates, hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of AED..... (the "guaranteed amount", in words: Arab Emirates Dirham.....) upon receipt by us of your demand in writing and your written statement (in the demand) stating:

(a) that the Principal is in breach of his obligation(s) under the Contract, and

(b) the respect in which the Principal is in breach.

The principal shall ensure that the Performance Security is valid and enforceable until the Principal has executed and completed the Works including remedying any defects and received the Performance Certificate.

Any demand for payment must contain your [Chief Executive Officer's] signature(s). The demand and statement must be received by us at this office on or before the "expiry date", being the date 90 days after the expected date of issue of the Performance Certificate under the Contract, when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the Contract has not been issued by the date 28 days prior to the expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued and that this guarantee has not been extended.

This guarantee shall be governed by the Federal laws of the United Arab Emirates and the laws of the Emirate of Dubai.

Yours truly,

Signature and Seal: .....

Name of Bank: .....

Address .....

.....

Date: .....

**Annex B: FORM OF ADVANCE PAYMENT GUARANTEE**

Brief description of the Contract: .....

Name and address of the Beneficiary: .....  
(whom the Contract defines as the Employer).

We have been informed that .....  
(hereinafter called the "Principal") is your contractor under such Contract and wishes to receive an advance payment, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we ....., being a bank operating in the United Arab Emirates, hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of AED..... (the "guaranteed amount", in words: Arab Emirates Dirham.....) upon receipt by us of your demand in writing and your written statement (in the demand) stating:

- (a) that the Principal has failed to repay the advance payment in accordance with the conditions of the Contract, and
- (b) the amount which the Principal has failed to repay.

This guarantee shall become effective upon receipt [of the first instalment] of the advance payment by the Principal. Such guaranteed amount shall be reduced by the amounts of the advance payment repaid to you, as evidenced by your notices issued under sub-clause 14.6 of the conditions of the Contract. Following receipt (from the Principal) of a copy of each purported notice, we shall promptly notify you of the revised guaranteed amount accordingly.

Any demand for payment must contain your Chief Executive Officer's signature(s). The demand and statement must be received by us at this office on or before the "expiry date", being the date 70 days after the expected expiry of the Time for Completion, when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the advance payment has not been repaid by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the advance payment has not been repaid and that this guarantee has not been extended.

This guarantee shall be governed by the Federal laws of the United Arab Emirates and the laws of the Emirate of Dubai.

Yours truly,

Signature and Seal: .....

Name of Bank: .....

Address .....

.....

Date: .....

**Annex C: FORM OF RETENTION MONEY GUARANTEE**

Brief description of the Contract: .....

Name and address of the Beneficiary: .....  
(whom the Contract defines as the Employer).

We have been informed that .....  
(hereinafter called the "Principal") is your contractor under such Contract, and wishes to receive early payment of [part of] the retention money, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we ..... , being a bank operating in the United Arab Emirates, hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of ..... Dhs (the "guaranteed amount", in words: .....Dhs) upon receipt by us of your demand in writing and your written statement (in the demand) stating:

- (a) that the Principal has failed to carry out his obligation(s) to rectify certain defect(s) for which he is responsible under the Contract, and
- (b) the nature of such defect(s).

At any time, our liability under this guarantee shall not exceed the total amount of retention money released to the Principal by you, as evidenced by your notices issued under sub-clause 14.6 of the conditions of the Contract with a copy being passed to us by the Principal.

Any demand for payment must contain your Chief Executive Officer's signature(s). The demand and statement must be received by us at this office on or before the "expiry date", being the date 70 days after the expected expiry of the Defects Notification Period for the Works, when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the Contract has not been issued by the date 28 days prior to the expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued and that this guarantee has not been extended.

This guarantee shall be governed by the Federal laws of the United Arab Emirates and the laws of the Emirate of Dubai.

Yours truly,

Signature and Seal: .....

Name of Bank: .....

Address .....  
.....

Date: .....